

Increasingly, I have had examiner's issue restriction or species election requirements to greatly limit their search. Typically, what I am seeing is an indication that multiple figures depict different inventions and a request for a restriction or election of species. After the restriction/election is made, the examiner refuses to consider claims that draw support from the non-elected figures. In effect, unless each figure shows every aspect of the invention, an amendment drawing from a non-elected figure cannot be made.

While there may be a technical basis for identifying separate species, it appears that this is just gamesmanship on the Office's part. Typically the same search would bear out the species shown in separate figures, and the examiner simply uses the election to prevent amendments that would place the claims in condition for allowance. This needlessly extends prosecution by adding continuation applications or requests for continued examination.

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